

# PRIVATE TAXPAYER RULING LR97-002

June 16, 1997

The following private taxpayer ruling is in response to your letter dated April 18, 1997. Your letter requests a determination of the application of Arizona's transaction privilege tax to the ... (...) concerning sales of discount buying club memberships.

The following is a restatement of the facts as presented in your letter.

Statement of facts:

...produces the "... Program ("Program"). Retailers or service providers ("Providers") participating in the Program agree to give a 20% discount off of goods and/or services to customers who are Program members when they show their membership card to the Provider. Close to 75% of the Providers signed on the Program are physicians, dentists, ophthalmologists, dry cleaners, car washers, mail services, legal services, paging services, etc. To obtain a 20% discount, the customer is required to select the merchandise or service, present his or her card, and pay the sales price of the merchandise less the applicable discount, plus all applicable taxes.

When persons purchase a membership, they receive the right to receive discounts from Providers and to receive a ... Card Directory and a Membership Card as indicia of that membership. The membership expires after a period of one year. Apart from the card and directory, customers receive no tangible personal property or services from ... The customers enrolled in the Program are under no obligation to purchase any merchandise from any of the participating Providers. The card is accepted either at the Provider's place of business or, as in the case of a service such as air conditioning, etc., in the customer's home. If a member is at a Provider's place of business but does not have a membership card, the member may still receive the discount. In this situation, the Provider will call ..., using an 888 toll free number, for verification of membership status. Once that is received over the telephone, then the appropriate discount will be given. Also, members can call ...at that same toll free number for the locations of all of the various Providers, if the member does not have the Directory readily available. ...has a full time employee to handle these types of calls and inquiries.

Providers agree to participate in the Program for one year, and to display window stickers showing that they are participants in the Program. The Provider can withdraw from the Program with a sixty day written notice to ... ...agrees to advertise the Program which will in turn bring more business for the Provider. For example, ...agrees to print an advertisement in the ... Card Directory. The Provider pays nothing to be in the Program.

Your position:

... Program sells intangible rights and services, not tangible personal property, and ...cannot be taxed at retail based on its gross receipts from the Program.

Applicable statutory provision:

Arizona Revised Statutes (A.R.S.) § 42-1310.01 imposes the transaction privilege tax on the business of selling tangible personal property at retail. A.R.S. § 42-1310.01(Q)(3) defines "selling at retail" as a sale for any purpose other than for resale in the regular course of business. All sales of tangible personal property are subject to tax unless specifically exempted by statute.

A.R.S. § 42-1310.06 levies the transaction privilege tax on the business of job printing, engraving, embossing and copying.

Discussion:

Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax.

The business of selling tangible personal property at retail is subject to tax in accordance with Arizona Revised Statutes (A.R.S.) § 42-1310.01. The tax base is the gross proceeds of sales or gross income derived from the business. All retail sales of tangible personal property are subject to the transaction privilege tax unless specifically exempted by statute.

...cites *Dine Out Tonight Club, Inc. v. Department of Revenue Services*, 210 Conn. 567, 556 A.2d 580, as authority for its position that the sale of ... Program memberships is the sale of intangible rights and services, not tangible personal property, and that therefore, ...cannot be taxed at retail based on its gross receipts from the Program. Although the applicable Connecticut statute is similar to Arizona's retail classification, the *Dine Out* decision is not controlling under the current facts. The Connecticut courts invoke the "true object" of the transaction test in arriving at their decision. Arizona does not follow this test in determining the taxability of a vendor's business activities.

In Arizona, a company which sold booklets providing discounts for the purchasers at the participating restaurants was considered to be engaged in the business of advertising, since the main focus of the business was the promotion and public exposure of the individual establishments which provided the discounts. *Carriage Trade Management Corporation v.*

*Arizona State Tax Commission*, 27 Ariz. App. 584, 557 P.2d 183 (1976). Arizona does not tax the sale of advertising. Therefore, the sale of savings club membership cards is not subject to tax as a retail sale.

With regard to the printing of the membership materials, the transaction privilege tax is imposed on the business of job printing. The tax base for the job printing classification is the gross proceeds of sales or the gross income derived from the business. Therefore, the sales price paid to a job printer for membership materials printed in Arizona is subject to tax. If the membership materials are purchased from an out-of-state job printer, the purchase is subject to Arizona use tax.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request.

The department rules that the sale of "... Program memberships by ... is exempt from transaction privilege tax as a sale of advertising.

The department also rules that an Arizona job printer is subject to tax on the gross income derived from the sale of the printing of the membership materials provided to "... Program members. If the membership materials are purchased from an out-of-state job printer, the purchase is subject to Arizona use tax.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the Department and is valid for a period of four years from date of issuance except as set out herein. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the Department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different Department position.